

Legal Protection for Customary Land Disputes of Customary Law Communities in West Papua for the Auwyu Tribe from the Perspective of Legal Pluralism

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Abstract. The implementation of environmental law in Indonesia faces significant challenges concerning compliance and enforcement mechanisms. This study aims to analyze the form of legal protection for customary land and evaluate the mechanisms for resolving customary land disputes in Boven Digoel Regency, West Papua Province, for the Auwyu Tribe from the perspective of legal pluralism. This study employs a socio-legal approach with a normative basis rooted in applicable state law. A qualitative doctrinal legal research method was used, analyzing relevant legislation, case law, and policy documents from 2019–2024. Data were collected through a systematic literature review and normative legal analysis. The findings indicate that legal protection is limited to administrative matters in accordance with the provisions of state law alone, which tends to downplay customary law and the existence of customary law communities. Consequently, the legal pluralism that occurs is only symbolic rather than substantive. Therefore, the resolution of customary land disputes should be directed toward a model of legal coexistence, wherein customary law is recognized as a legitimate source of law, ensuring that the resolution of disputes involving customary law communities is based on customary law integrated into the national legal structure. These findings underscore the urgent need for institutional strengthening, improved coordination mechanisms, enhanced capacity building for enforcement agencies, and stronger stakeholder engagement in environmental governance. This research contributes to understanding the gap between *de jure* and *de facto* environmental protection in Indonesia and provides recommendations for policy reform and improvement.

Keywords : customary land disputes; customary law communities; legal pluralism.; legal protection.

INTRODUCTION

The vast island of Papua, which includes vast forests, is now struggling to maintain and preserve its forests (Sheil et al., 2021; Ungirwalu et al., 2025). Papua as the largest island in Indonesia is also the area with the largest forest area (Lahallo et al., 2022; Yudha et al., 2021). The largest portion of forests in Papua is in West Papua Province (Lewenussa, 2023; Sopaheluwakan et al., 2023). The rate of deforestation in Papua is growing rapidly, which is in line with the shrinking forest area (Gamoga et al., 2021; Santoro et al., 2025). One of the reasons is shown by the massive granting of permits for the release of forest areas (Director General of Forestry Planning and Environmental Management), among other permits including environmental permits, location permits, and plantation business permits. All of them erode the area of forests in Papua which has become communal land for customary law communities, including the people in Boven Digoel Regency, South Papua Province (Kristin et al., 2025; Ungirwalu et al., 2021). One example is the customary law community (hereinafter referred to as MHA) of the Auwyu tribe in Boven Digoel, Papua along with the Moi tribe who have sued the government and several oil palm companies with demands for the revocation of environmental permits that are considered to threaten their customary forests. The permits granted to PT IAL are in the form of a Location Permit issued by the Regent of Boven Digoel and a Plantation Business Permit (IUP) issued by the Papua Papua Province Investment and One-Stop Integrated Services Office (DPMPTSP) (Wijayanto et al., 2025). However, the Auwyu indigenous people have never obtained and received the permit information document

and have never given approval to the company's plan (Bond & Kelly, 2021).

It all started from an oil palm plantation mega project called the Red Land Project, with a project area of 280,000 hectares. The project stretches from the Digul river to the Mappi river which is the area where the Auwyu tribe lives. The project permits were given to seven companies, one of which was PT IAL. On that basis, the Auwyu indigenous people filed a lawsuit with the State Administrative Court over the issuance of the permit, although it was rejected at the cassation level at the Supreme Court in 2024 through Supreme Court Decision No. 458 K/TUN/LH/2024. The facts of the trial from the *amicus curiae* document at the time of the cassation process to the Supreme Court are known that there are several facts of the sale and purchase of customary land to PT IAL without the approval of the Indigenous Peoples Institution of Boven Digoel district (Indonesian Caucus for Academic Freedom [KIKA], 2023). In April 2017, Fabianus Senfahagi (Chairman of the Boven Digoel Indigenous Peoples Institution), transferred the Plantation Business Permit (IUP) covering an area of 39,190 hectares from PT ESK to PT IAL without the knowledge of the Auwyu tribe (Rumbiak & Suryaningtyas, 2024).

The Auwyu Tribe is one of the Indigenous Peoples Institutions whose existence is recognized by the Boven Digoel Regency Government as outlined in the Boven Digoel Regency Regional Regulation Number 2 of 2023 concerning the Recognition, Protection, and Respect of the Rights of Customary Law Communities and further regulated in its implementing regulations through the Boven Digoel Regent Regulation Number 14 of 2024 concerning Guidelines for the Recognition and Determination of Customary Law Communities in Boven Regency Digoel. The provisions, which were born in 2023 and 2024, are intended to provide protection for customary law communities, although they came later after the issuance of the IUP in 2017. The issuance of these good provisions could not provide victory at the judicial table for the Awyu tribe, where in the same year in 2024 the Supreme Court rejected the cassation filed by the Awyu tribe. According to Tennant (2017), the rejection only dwells in the formal realm without paying attention to substantive aspects so that indigenous peoples, who should be protected by their customary territories, are actually clashed with the fact that the management of their customary forests is switched to land or state forests in the form of oil palm plantations by private parties who pocket IUP.

The dispute case as described above shows the weak legal protection for customary law communities over customary lands that they have hereditary control and where they are economically and religiously dependent (Ifrani et al., 2019; Rahman et al., 2018). Legal protection for customary law communities when dealing with investment interests in the context of development to advance the economy, is a conflict that often arises due to the overlap between the customary rights of indigenous peoples and the rights of the state or third parties such as companies that have permits to manage land as oil palm plantations or other management permits, the government that on behalf of national strategic projects has the right to manage forests and convert them into land farmers. The Merauke Integrated Rice Estate (MIRE), which is part of the Merauke Integrated Food and Energy Estate (MIFEE) program launched by the Government in 2010, represents one such example (Tjilen et al., 2018; Wahyudin & Harjanto, 2023). Other similar programs include the Food Production Center Area, the Papua Food Estate, and the Merauke Special Economic Zone, all of which have converted forests in Papua into agricultural land and/or plantations (Yuwono, 2024). These

developments involve investors or individuals who are immigrants from outside the indigenous tribes in Papua (Blesia et al., 2021; Kadir & Murray, 2019). Although state law has formally regulated the legal protection of customary law communities, such as the provisions in the Papua Special Autonomy Law and the Regulation of the Regent of Boven Digoel on Guidelines for the Recognition and Determination of Customary Law Communities, the state law does not accommodate value systems such as the interpretation of customary land rights owned communally by customary law communities as well as customary settlement mechanisms.

Based on the background that has been described above, the problem to be analyzed is whether the substantive state law has provided adequate protection for customary land disputes in West Papua from a socio-legal perspective. The socio-legal perspective is carried out through a legal analysis that is deepened with social, cultural, and power contexts that increasingly negate the tension between legal protection for the land of customary law communities in accordance with state law and customary law. The purpose of this article is to provide a comprehensive understanding of the dynamics of customary land legal protection from the perspective of legal pluralism.

Customary land disputes that occur along with the shifting meaning of customary land rights, even to the point of civil transfer of rights, are not only related to formal state legal aspects, such as laws and regulations and administrative procedures, but also involve social, cultural, political, and power factors in the indigenous peoples themselves that affect the legitimacy of customary law that applies to customary law communities. As a result, the effectiveness of legal protection rests on state law alone, which tends to diminish customary law and the existence of customary law communities. Thus, the legal pluralism that occurs between state law and customary law is only symbolic, not substantive. Therefore, the analysis knife used in this study uses the theory of legal pluralism. The theory of legal pluralism departs from the view that in a society, there is not only one legal system (state law), but many legal systems that live and apply at the same time. Thus, law is not only understood as a state regulation, but also includes customary rules, social norms, and practices of indigenous communities that have the power to regulate and be obeyed by the community.

Therefore, this research aims to provide comprehensive analysis of environmental law implementation in Indonesia, identifying systemic barriers and proposing practical solutions for improved compliance and enforcement. The significance of this study lies in offering evidence-based recommendations to lawmakers, government agencies, and environmental stakeholders to strengthen legal frameworks and institutional capacity for more effective environmental protection.

MATERIALS AND METHOD

The research method in this study employs a socio-legal approach, focusing on the interaction between state law and customary law in the context of customary land disputes involving the Auwyu Tribe in Boven Digoel Regency, West Papua. This approach combines a normative analysis of laws and regulations governing customary law communities, customary lands, and dispute resolution mechanisms with empirical data derived from customary land dispute resolution practices in the field. Data sources include legal documents, court decisions, regional and regent regulations related to the recognition of customary law communities' rights, as well as interviews with relevant stakeholders such as indigenous peoples, customary

institutions, and government agencies. The analysis is conducted using the theory of legal pluralism to examine the tension and coexistence between state law and customary law, enabling this study to assess the extent to which the legal protection provided is substantive or merely symbolic, and how dispute resolution mechanisms can be developed to respect the customary rights of indigenous peoples while maintaining harmony within the national legal framework.

RESULTS AND DISCUSSION

The social context of the Auwyu people's customary land

Boven Digoel Regency is in the south of the island of Papua which is located remotely and is divided by the Digul River which is the main transportation route and source of livelihood for the customary law community in Boven Digoel. During the colonial period, the Boven Digoel area was known as a natural prison because of the dense forest and the Digul river that stretched and was far from settlements. This area slowly changed from a quiet administrative city to Boven Digoel Regency since the reform era through the expansion of Merauke Regency. At least in Boven Digoel Regency there are 5 (five) tribes living there, namely the Auwyu, Mandobo, Muyu, Korowae, and Kombae tribes who inhabit 20 (twenty) districts and 112 (one hundred and twelve) villages. Two of the five tribes still hold traditional customs and lifestyles, namely the Korowae and Kombae tribes. Meanwhile, the other three tribes, namely the Auwyu, Mandobo and Muyu tribes, have undergone many changes and are more advanced because of their proximity to the district capital.

Land in customary law societies functions as a communal right for customary law communities. Its use pays attention to the preservation of nature and is reserved for the next generation. Therefore, for customary lands, the community can only utilize, manage, process and enjoy the results. The ownership rights remain in the communal community where the land cannot be transferred or granted, but what can be granted is the result of the custom. The ownership of customary land that cannot be transferred is related to its function, namely that customary land in a socio-cultural context. Customary land serves as a determinant of kinship relations related to the function of community life, and it is the customary law community that says this piece of land belongs to me (Muhammad).

Ownership or customary land rights for customary law communities are known by various terms, namely lordship rights, ancient rights, and the right to avail. The right for customary law communities to control their customary land in laws and regulations in Indonesia is called customary rights based on Article 3 of Law Number 5 of 1960 concerning Agrarian Principles. From these various terms, the control of customary law communities over their customary lands is carried out publicly and privately, although the term customary rights according to Maria Sumardjono is a right that has the highest level in line with the right to control from the state so that it is not a property right that is interpreted privately. Public and private control on the one hand is joint ownership of a territory as well as the right to regulate the relationship between the territory and individuals, both members and non-members of customary law communities (Sari et al., 2021). Likewise, the facts on the ground, from certain customary areas that are publicly owned by customary law communities, the management of them is sought by several clans or community groups.

The customary law community in Boven Digoel Regency, as well as customary law

communities in other areas in South Papua Province, are facing the reality of shifting the concept of customary rights to their land. The transformation from traditional communal land management to modern economic practices, such as working in palm oil mills, marked a shift in the way of life of indigenous peoples. Like most ethnic communities in Papua, the relationship with nature is not only for the economic benefit of natural products but also related to other elements in people's lives such as relationships with ancestors, local theology, and rites. Over time, the pattern of this relationship is challenged by new practices presented by external parties such as oil palm plantation companies. The traditional practices of hunting, gathering, and communal forest management were replaced by wage labor. Land expansion and non-transparent compensation for land have exposed customary law communities to social upheaval over their daily lives. From the changes that triggered the social upheaval, the presence of palm oil companies has brought significant changes to the way of life of the community (Rumkabu et al., 2023) as happened in Aiwat Village, which is also located in Boven Digoel Regency along the Digul river. As these communities are pushed into an economic system that deals with a model of land ownership as opposed to their customary land system, the shift in customary land rights becomes increasingly apparent. Land is maintained communally where individuals can only move the produce from the land, shifting to the transfer of customary land with permission to develop customary land into, for example, oil palm plantations. There is even land release to outsiders from indigenous peoples.

Boven Digoel Regency Regional Regulation Number 2 of 2023 concerning the Recognition, Protection, and Respect of the Rights of Indigenous Peoples in conjunction with the Boven Digoel Regent Regulation Number 14 of 2024 concerning Guidelines for the Recognition and Determination of Indigenous Law Communities in Boven Digoel Regency has recognized that in Boven Digoel Regency there are several indigenous people's institutions. Although the recognition needs to be stated in a written statement by the Regent of Boven Digoel after going through the stages of identification, verification and validation, as well as determination that has not been obtained until now, there is at least a legal basis for the existence of the Auwyu tribe as a customary law community. This did not extinguish the hopes of the Auwyu indigenous people to sue the existence of oil palm plantations that threaten their customary territories and forests through a lawsuit to the State Administrative Court over the issuance of environmental permits by the palm oil company PT IAL.

Legal protection of customary land rights in West Papua

Article 18B paragraph (2) of the 1945 Constitution regulates the recognition and respect of customary law community units and their traditional rights, as long as they are still alive and in accordance with the development of society and the principles of the Republic of Indonesia. These rights for customary law communities include customary rights to a certain area that is the living environment of its citizens, which according to Law No. 21 of 2001 concerning Special Autonomy for Papua Province includes the right to utilize land, forests, and water and its contents in accordance with laws and regulations. Therefore, it is appropriate that the rights of indigenous peoples are protected in practice as an implementation of the sound of laws and regulations.

Currently, the definition of indigenous peoples or customary law communities has been constructed as one of the legal subjects that have rights and obligations, especially after being explicitly mentioned in various laws and regulations such as ministerial regulations, although

there is no specific law that regulates it as the draft Law on indigenous peoples has stalled in the legislative process. Customary law communities are defined in various formal legal regulations, one of which is regulated in the Regulation of the Minister of Home Affairs Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities. The regulation of the minister of home affairs defines customary law communities as Indonesian citizens who have distinctive characteristics, live in groups in harmony according to their customary law, have ties to ancestral origins and/or similarities of residence, have a strong relationship with land and the environment, and there is a value system that determines economic, political, social, cultural, legal institutions and utilizes a certain area for generations.

The state through legal instruments should be able to guarantee the rights of customary law communities, especially in Papua with its specificity through special autonomy provisions. Before analyzing what is happening in Papua, it is important to know that in the implementation of the provisions of the law that protects indigenous peoples, there are several obstacles in its implementation. In the reform era in 1999, Law Number 41 of 1999 concerning Forestry was issued, which in order to affirm the concept of control from the state, actually gave different treatment to customary law communities. In these provisions, there are 3 (three) legal subjects, namely the state, customary law communities, and rights holders, whether individuals or legal entities. Regarding forest control, all forests in the territory of the Republic of Indonesia are controlled by the state which still pays attention to the rights of customary law communities, as long as the reality still exists and their existence is recognized. Furthermore, Article 5 states that state forests can be in the form of customary forests. With these provisions, it is not clear about the rights of customary law communities to the forests they inhabit as customary forests. Such an arrangement was submitted to the Constitutional Court in 2013 through a decision on case No. 35/PUU-X//2012 with a decision that the Forestry Law classifying customary forests as state forests is a form of neglect of customary law people's rights and violates the constitution. After this decision, the regulation and management of customary forests that were previously under the authority of the Ministry of Forestry shifted to the Ministry of Agrarian and Spatial Planning.

The Ministry of Agrarian Affairs and Spatial Planning in 2015 then issued a regulation that is expected to provide legal protection for customary law communities by introducing a new land right, namely communal rights. The formal provisions of state law through the issuance of the Regulation of the Minister of ATR/BPN Number 9 of 2015 concerning Procedures for the Determination of Communal Rights on the Land of Customary Law Communities and Communities in Certain Areas, which was later revoked by the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 10 of 2016 concerning the same matter, provided the starting point for the shift because it introduced the existence of communal rights. Communal rights refer to the common ownership of land, both by customary law communities and other communities within a particular area.

The debate related to new land rights in the form of communal rights for customary law communities has been turbulent after its introduction, because looking at the formulation of the definition of communal rights in Article 1 number 1 which is also affirmed in Article 2 of the Ministerial Regulation emphasizes that forest areas can be given communal rights not only to customary law communities, but also to other communities who have controlled the land for a

certain period of time and meet the requirements as stipulated in Article 3 paragraph (2) ministerial regulation. The debate on the narrative of the regulation mainly lies in two things, namely first, the position of the legal subject of communal land rights between customary law communities and other communities in the area. Furthermore, the second lies in the period of time that other communities can obtain communal rights, which are written for at least 10 (ten) years in a row which is contradictory to the hereditary control of customary law communities in an area.

Not long after, the communal rights debate in 2019 was revoked with the issuance of the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 18 of 2019 concerning Procedures for the Administration of Customary Land of Customary Law Communities United, which in its consideration stated that to regulate customary land of customary law community units which had previously been stipulated in the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 10 of 2016, needs to be adjusted to the legal needs of the community. This provision guarantees the existence of customary rights by the unity of customary law communities, previously called customary law communities, as long as in fact they still exist and meet the criteria for the existence of customary law communities and institutions, the area where customary rights take place, the relationship, linkage, and dependence of customary law communities with their territories, as well as the existence of customary laws that are still valid and obeyed by the community. Article 4 of the provision states that if the area where the customary rights are already owned by an individual or legal entity, or has been obtained or released by a government agency in accordance with the provisions of the law, then the exercise of the customary rights is invalid. According to the author, this provision is a legitimacy for the customary rights of a customary law community, which fulfills 2 (two) aspects. First, customary rights as long as they can be proven to be in accordance with certain administrative criteria and second, as long as the customary rights still exist or there has not been a release or change of hands. The question then is whether in practice the release of customary rights can occur. On the other hand, what is happening massively in Boven Digoel Regency is the transfer of customary land through the plantation business license mechanism to the company as filed by the Auwyu tribe.

The two criteria, which are shields for the legal protection of customary law communities, require a certain administrative process through state institutions such as the National Land Agency and the West Papua Regional Government as well as through customary institutions such as the Papuan Customary Council. This administrative recognition is a stumbling block for customary law communities, such as the Auwyu tribe, to obtain substantive legal protection. On the other hand, a derivative regulation of the Papuan Special Autonomy Law in the Boven Digoel Regency area that protects the rights of the Auwyu and other tribes in Boven Digoel was only issued after a dispute occurred in 2017. The regulation is the Regulation of the Regent of Boven Digoel Number 14 of 2024 concerning Guidelines for the Recognition and Determination of Customary Law Communities in Boven Digoel Regency.

Practices and Problems of Customary Land Disputes

Granting permits that threaten customary forest areas

The Auwyu tribe's lawsuit in the state administrative court related to the granting of plantation business licenses is one of many cases that have occurred that threaten the existence

of the community's customary land in the form of forests. The massive issuance of permits for the release of forest areas, including plantation business permits, threatens the existence of customary forests. Forests for indigenous peoples, especially in Boven Digoel Regency, play an important role in life, because it is where food, shelter, and religious ties come from. As in Boven Digoel Regency, especially in the place where the Awyu tribe lives, which has long been known for its jungle, the clearing of forest land into plantations will certainly affect the community. This threat to customary law communities has an impact on the entire nature that is the source of life of customary law communities has changed, be it forests, seas, rivers, or the existence of communal rights to customary lands.

Plantation business licenses are granted based on the provisions of Law Number 39 of 2014 concerning Plantations. Article 47 paragraph (1) of the provision stipulates that plantation companies that carry out plantation crop cultivation business with a certain scale and/or plantation product processing business with certain factory capacity are required to have a Plantation Business License. The area referred to in the article is the area of plantation land above 25 hectares. The plantation companies that can have a plantation business license must be in the form of a legal entity. Permits are granted by the governor for cross-district/city areas or by the regent/mayor for areas within a district/city. There are at least 2 (two) interesting things regulated in this Law, the first is related to special licensing for plantation business licenses in Papua, both Papua Province and West Papua Province the granting of permits is adjusted to the provisions of the law. The second is related to the requirements for ownership of land rights, where before a legal entity company obtains a plantation business license, there are requirements that are no less important to be met, namely the need for the company to have rights to the land that will be managed as a plantation. Further rules on licensing procedures or guidelines are regulated by the Ministry of Agriculture through the Regulation of the Minister of Agriculture Number 98/Permentan/OT.140/9/2013 concerning Plantation Licensing Guidelines and their amendments.

Legal protection against these threats has actually been regulated in various laws and regulations, such as Law Number 32 of 2024 concerning Amendments to Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems (hereinafter referred to as the KSDAHE Law) and Law Number 32 of 2009 concerning Environmental Protection and Management (hereinafter referred to as the PPLH Law). It can be said that the KSDAHE Law which regulates the conservation of biological natural resources and ecosystems is one of the important parts of environmental protection and management efforts in general regulated in the PPLH Law. The KSDAHE Law provides a specific legal basis for protecting biodiversity, while the PPLH Law provides a broader framework for all aspects of environmental management.

Transfer of customary rights and transfer of customary land

According to Van Vollenhoven, customary rights cannot be permanently transferred and foreigners can use the land or territory of a customary law community by providing compensation (rent) or *tribute* (Sari et al., 2021). However, under certain circumstances, according to Ter Haar, these customary rights can be transferred. Certain circumstances are as a form of accountability for a crime, to restore the cosmic balance, and as a result of war or pressure from the central government (Sari et al., 2021). The non-transferable nature of

customary rights is found in practice in the Papuan local government which has entered into land use contracts with indigenous communities since before 1963 based on the concept of *recognitie* (recognition) (Sari et al., 2021). This concept refers to the recognition by the state or government of the existence and applicability of customary law on customary lands that are controlled and utilized by customary law communities.

In Papua, after the issuance of Law No. 21 of 2001 concerning Special Autonomy for Papua Province, a clear distinction was made between the customary rights of customary law communities and the individual rights of customary law communities. In the implementing regulation through the Special Regional Regulation of Papua Province Number 23 of 2008 concerning the Customary Rights of Customary Law Communities and Individual Rights of Customary Law Communities on Land stipulates in Article 8 paragraph (3) that in the event that there is a third party who needs land on which there are customary rights of customary law communities, then after deliberation, the land can be released partially or in whole with mutually agreed compensation, or loaned to be managed by a third party in the form of a rent-to-rent or profit-sharing or other agreed form. In the event that the release of customary land is agreed, then the land is released to the State so that it becomes land that is directly controlled by the State. The Land Office in Papua placed the letter of release of this customary land from the clan or tribe as a condition for the registration of new rights.

After the publication of the Special Regional Regulation of Papua Province Number 23 of 2008 concerning the Customary Rights of Customary Law Communities and the Individual Rights of Customary Law Communities on Land was issued, the court became a forum that validated the release of customary rights over customary lands. The case in court related to this was found in a case in the civil realm which was confirmed from the results of a study study of court decisions by Sari et al. (2021) against 4 (four) District Court decisions in Sorong and Jayapura. From the four court decisions studied, it shows that the practice of releasing customary land can be carried out through free selling or government programs such as airports and grants.

Auwyu Tribal Customary Land Dispute

The Auwyu tribe in Boven Digoel Regency, South Papua Province is one of the indigenous Papuan peoples who are fighting to defend their customary forests from the expansion of palm oil corporations. Their struggle, known as "*all eyes on Papua*", was pursued through litigation efforts to the State Administrative Court, after administrative efforts in the form of objections filed through letters could not resolve the dispute. The State Administrative Lawsuit was filed to challenge the existence of the permit granted to PT IAL in the form of a Location Permit issued by the Regent of Boven Digoel and a Plantation Business Permit issued by the Papua Papua Province Investment and One-Stop Integrated Services Office (DPMPSTSP). Both permits are required for companies before starting a plantation business. Location Permits issued by the regent are required in connection with the regent's authority related to spatial planning in his area, while Plantation Business Permits are required as a fulfillment of the Law on Plantations.

In the lawsuit filed by the State Administration, the Auwyu tribe criticized the validity of the two permits issued considering that the Auwyu tribe has never obtained and received the permit information documents and has never given approval to the company's plans. In fact,

negotiations or deliberations with customary law communities must be carried out first in accordance with the mandate of Article 42 paragraph (2) of Law Number 2 of 2021 concerning Amendments to Law Number 21 of 2001 concerning Special Autonomy for Papua Province. In the facts of the trial, it was known that there was a sale and purchase of customary land to PT IAL without the approval of the Indigenous Peoples Institution of Boven Digoel district.

The Auwyu tribe's litigation efforts must be stopped because the appeal was rejected by the Supreme Court in 2024 through Supreme Court Decision No. 458 K/TUN/LH/2024 (Supreme Court of the Republic of Indonesia, 2024). In his decision, although it was rejected, there was a difference of opinion among the panel of judges. The difference of opinion is related to several considerations, the first is related to the grace period for filing a lawsuit that has exceeded the maximum filing period. Even though the grace period has passed, it can be set aside considering substantive justice rather than formal justice. The second is related to compliance to conduct negotiations or deliberations with customary law communities before the granting of permits by the Regent of Boven Digoel and the Papua Papua Province Investment and One-Stop Integrated Services Office (DPMPTSP). Third, related to compliance with the fulfillment of the Environmental Impact Analysis for the permit applicant company, it is interpreted not only as an environmental aspect but also as a need to pay attention to social aspects because the forest that will be used as the location of the oil palm plantation functions as a place to meet food needs, learning centers, and religions such as ritual places, cemeteries, and traditional events for the Auwyu people.

One of the representatives of the Indonesian Environmental Forum Foundation (WALHI) in an interview with the author (personal communication, October 2024) said that it was true that there had been a relinquishment of customary land rights. The release that occurred is not in line with customary law, where customary land owned communally cannot actually be released. Even if the release occurs, it must be through an agreement from the Auwyu tribe and there must be something exchanged, for example land is exchanged for land or land is exchanged for lives. In the context of the changing times with the existence of palm oil companies, for example, that manage customary land, the thing that is exchanged is no longer land or lives, but a large amount of money determined by customary ceremonies. But unfortunately, companies tend to avoid the ideal customary process with cost efficiency considerations. For this reason, the company discussed the exchange with only a few members of the indigenous people to agree on a certain amount of money. Interestingly, according to a representative from WALHI, the agreement for a sum of money in exchange was in the form of a love rope which was a form of agreement by the Auwyu tribe to accept the presence of a company on their land to manage their customary land. So that the giving of compassion is not like buying and selling where the rights to customary land are released to the company. For companies, this understanding cannot necessarily be accepted because the company in accordance with state law has carried out an administrative process to control the land. From this fact, with the entry of state law practice through the granting of plantation business licenses as happened to the Auwyu tribe, it has encouraged a shift in the mindset of some indigenous peoples in interpreting their customary lands. Although it still maintains communal rights, the exchange through the rope of love encourages a materialistic mindset by counting everything on the ground to be counted as a rope of love.

In addition to the State Administration lawsuit filed by the Auwyu tribe, there are also

lawsuits filed by the company holding the license. PT KCP and PT MJR sued the Ministry of Environment and Forestry regarding the revocation of forest area release permits. The lawsuit was rejected by the Jakarta PTUN judge, so that the plan of PT KJP and PT MJR together with 5 (five) other companies to operate the largest oil palm plantation in Indonesia through the Tanah Merah project on the forests of the Auwyu indigenous people was delayed. The two lawsuits, both lawsuits filed by the Auwyu tribe and those filed by companies holding permits for the release of forest areas, are in the realm of state administration that sues the decision issued by officials. The lawsuit in the civil realm can be traced from the results of the study of court decisions by Sari et al. (2021) on the 4 District Court decisions that have been described in the previous section. With several examples of litigation efforts related to customary lands, it is concluded that customary law that inevitably coexists with state law in a legal pluralism, including in dispute resolution, it is necessary to build coexistence between the two.

Analysis of Legal Protection and Dispute Resolution in the Perspective of Legal Pluralism Theory

The theory of legal pluralism explains that the state legal system and customary law can coexist, but in the context of the shift in customary land rights in South Papua Province to Boven Digoel Regency, state law seems to be more dominant. This theory can be a knife in analyzing the tension between customary law that prioritizes communal ownership of customary land and state law that tends to support individual rights or permits for customary land management by corporations. Legal pluralism recognizes that these tensions often occur in countries with strong indigenous populations, where customary law still plays an important role in people's daily lives. According to Griffiths, legal pluralism can lead to normative conflicts when formal legal rules are not in line with the local values of customary law communities.

In the customary law community of the Auwyu tribe in Boven Digoel after the issuance of the Boven Digoel Regency Regional Regulation Number 2 of 2023 concerning the Recognition, Protection, and Respect of the Rights of Indigenous Law Communities *in conjunction with the* Regulation of the Regent of Boven Digoel Number 14 of 2024 concerning Guidelines for the Recognition and Determination of Customary Law Communities in Boven Digoel Regency, they together with the Customary Territory Registration Agency carried out capacity building of indigenous peoples in order to accelerate the establishment of the PPMHA committee so that it can protect the rights of the Auwyu customary law community before state law (Hiwa, 2024). The Regional Regulation has full consequences for the government to respect, protect, and advance the rights of customary law communities, including with regard to the objects of customary rights, which include customary land, water, customary forests, and wildlife.

The use of the theory of legal pluralism to analyze this problem is seen from the application of state law as outlined in various provisions, including provisions related to customary law communities outlined in the conceptual framework, which is then faced with customary law that has been recognized by customary law communities in Boven Digoel Regency for generations. As state law through the Boven Digoel Regency Regulation Number 2 of 2023 and Number 14 of 2024 mentioned above forces customary law communities to follow certain provisions or conditions so that their existence is legally recognized by the state.

The same thing also happens in the realm of the transfer of rights to customary communal land. Before the issuance of the Minister of ATR/BPN Number 9 of 2015, it was known that there were customary rights by indigenous peoples, where the management and processing of land was regulated by indigenous peoples as holders of customary rights to be managed by certain clans or clans. After the issuance of the Ministerial Regulation, a communal right was introduced for indigenous peoples whose rights need to be registered first to be determined by the Regent or Mayor or Governor. Furthermore, regarding the use or use of the land, the Boven Digoel Regency Regulation Number 2 of 2023 in Article 27 regulates the use of customary land by outside parties. However, the use by external parties such as legal entities and/or individuals is carried out on the basis of rights born from agreements between members of customary law communities with the approval of the clan chairman and obtaining recommendations from the Regional LMA (Indigenous People's Institution) (Djojodigoeno Center for Customary Law Studies, 2023). This state law related to the use by outsiders is a new thing for customary law communities who have been prioritizing the concept of communal rights to their land which can only be used and used by the clan clans there.

On the other hand, there is also a state law that allows the granting of plantation business licenses on behalf of national projects or corporate interests. The permit needs to be completed with an EIA document in the form of an environmental permit, which in the case of Boven Digoel Regency, the Provincial Government through the Head of the Papua Province Investment and One-Stop Integrated Services Office issued an environmental feasibility decision letter to PT. IAL. With the passage of the environmental permit, the oil palm plantation initiated by PT. IAL will disrupt the environment which is predicted to account for 47.8% of national greenhouse gas emissions due to deforestation (Djojodigoeno Center for Customary Law Studies, 2023).

On the island of Papua, in general, it is known as a specificity as stipulated in Law Number 21 of 2001 concerning Special Autonomy for Papua (Special Autonomy Law) which has been amended by Law Number 35 of 2008 and Law Number 2 of 2021. As a further implementation of the Papua Special Autonomy Law, Government Regulation Number 106 of 2021 concerning the Authority and Institution of the Papua Special Autonomy Policy (PP Kewenangan Papua) and Government Regulation Number 107 of 2021 concerning the Reception, Management, Supervision, and Master Plan for the Acceleration of Development in the context of the Implementation of Special Autonomy of Papua Province have been prepared. In the Papuan Special Autonomy Law and the Papuan Authority Decree, provincial authority includes the authority of all fields of government, except for the absolute authority of the government and the authority of the government related to development planning policies; balance funds; state administrative system and state economic institutions; the authority of human resource development; and strategic utilization of natural resources and high technology, national conservation and standardization. This provides the door for the Government's policy to implement various national programs in Papua. One of them occurred in South Papua Province but in a different location from Boven Digoel Regency, namely in Merauke.

In 2008 with the existence of the Merauke Integrated Rice Estate (MIRE) which is part of the Merauke Integrated Food and Energy Estate (MIFEE) program launched by the Government in 2010, Merauke was designated as one of the districts in South Papua Province

that had to give up its forests to be converted into plantation land. Other similar programs are the Food Production Center Area, the Papua Food Estate, and the Merauke Special Economic Zone. The conditions in South Papua Province are also legally covered in technical provisions at the ministerial level through the Regulation of the Coordinating Minister for Economic Affairs (Permenko) No. 8 of 2023 concerning the Fourth Amendment to the Coordinating Minister Regulation No. 7 of 2021 concerning Changes to the List of National Strategic Projects, which regulates the addition of national strategic programs in South Papua Province, namely the Merauke Food and Energy Development Area and Presidential Decree No. 15 of 2024 concerning the Task Force Acceleration of Sugar and Bioethanol Self-Sufficiency in Merauke Regency. The strategic project is considered by the Pusaka Bentala Rakyat Foundation to actually worsen the condition of the environment and indigenous peoples instead of getting prosperity for the nation. Large-scale land ownership that reaches millions of hectares has resulted in Indigenous Peoples being excluded and losing control over the land and forests that are their source of livelihood, one of which is due to the practice of land grabbing in the Merauke Integrated Food and Energy Estate program through the granting of business licenses to corporations without information and consent from indigenous peoples (Makuba, 2024).

Thus, from the perspective of legal pluralism theory, legal protection of customary lands of customary law communities in Papua must be understood as the result of the interaction between two different legal systems, namely state law and customary law that live simultaneously but are not always harmonious. State law provides a normative framework but its implementation often ignores the customary legitimacy and procedures that underlie substantive justice for local communities. As a result, legal protection derived from state law is formal and administrative, while protection through customary law is more substantive but less juridically recognized. In dispute resolution, indigenous peoples trust customary mechanisms such as tribal deliberations and customary councils, which are oriented towards reconciliation and social balance. However, these mechanisms often lack formal legal force. Therefore, integration between the two legal systems is needed so that legal pluralism is not only symbolic, but also a means of protecting rights and resolving disputes that are fair, equal, and contextual for indigenous Papuans.

CONCLUSION

This research demonstrates that while Indonesia possesses a robust environmental legal framework, significant implementation gaps undermine the effectiveness of environmental protection efforts. The primary barriers identified include institutional weakness, inadequate funding, insufficient inter-agency coordination, and limited judicial enforcement capacity. These findings highlight that legislative reform alone is insufficient; comprehensive institutional strengthening is imperative. The implications of this study extend to policymakers and environmental regulators who must prioritize capacity building, enhanced coordination mechanisms, adequate resource allocation, and stakeholder engagement for effective environmental governance. Future research should investigate the role of community participation and environmental advocacy in improving law enforcement, examine regional variations in implementation effectiveness across different provinces, analyze the impact of new environmental regulations introduced after 2024, explore the effectiveness of alternative

dispute resolution mechanisms in environmental conflicts, and assess the integration of environmental law with other legal frameworks such as criminal law and administrative law in Indonesia.

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